

THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Yvette Johnson
"Complainant"

v.

Iron Wheel Inc. Thomas Waters
"Respondent"

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)
) Docket No. 12-02
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)

Hearing held on April 12, 2013, at Concord, New Hampshire.

DECISION AND ORDER

The Board of Manufactured Housing (the Board) heard a complaint filed by the home owner, Yvette Johnson (Complainant) of a manufactured home which is situated at #6 Axle Avenue, Danville, New Hampshire, alleging that Iron Wheel, Inc., Thomas Waters (Respondent) has violated RSA 205-A:2 IX, which statute indicates that a park owner or operator is prohibited from charging or attempting to charge a tenant for repair or maintenance to any underground system of the park for causes not due to negligence of the tenant.

After considering all testimony and evidence presented to the Board, including all documents in the record, the Board issues the following order.

BACKGROUND INFORMATION

A hearing was held on April 12, 2013, in Room 307 of the Legislative Office Building, Concord, New Hampshire. Chairman Mark Tay, Esquire, and board members Juanita J. Martin, Representatives Carol H. Friedrich and Rose Marie Rogers, Lois Parris, Judy Williams, Ken Nielsen, Esquire, and Peter Graves heard this case.

The Complainant, Yvette Johnson, was not present. The Complainant was represented by her son, Mr. Mark Johnson. The Respondent, Iron Wheel, Inc., represented by Mr. Thomas Waters, President, was present.

On September 18, 2012, Complainant Yvette Johnson filed a complaint with the Board alleging the following issues: That the manufactured housing pad site (the lot) at #6 Axle Avenue, serviced by a subsurface septic system, experienced an effluent back-up on or about May 12, 2012. As a result of the Complainant's efforts to rectify the back-up, plumbing and

Drain King, Inc. technician, Mr. Waters then dug up and located the problematic section of underground pipe which he replaced. Mr. Waters indicated that he felt the damage to the pipe was caused by the work of the cable utility burying its line in the immediate vicinity of the septic pipe. Photo(s) of the damaged pipe and cable were introduced as evidence.

Mr. Waters testified that he did not charge Ms. Johnson for any work that he performed in replacing the damaged pipe section, and reiterated that the first he had heard of the Complainant's septic problem was a very short time before he arrived at her home that Monday morning. Mr. Waters also testified to the set-up of clean outs in the underground septic lines, and his own efforts to remedy such problems for the residents of the Park.

Questions from the Board Members revealed that the Complainant had lived in the manufactured home community for perhaps thirty years. Also revealed were the facts there is an office answering machine and that the Respondent's office telephone number is call forwarded to his office staff over the weekends.

The Complainant was unable to explain why, after being told that the problem was in the underground septic pipe (acknowledged to be the property and responsibility of the Respondent), there was no effort made over the weekend to contact the Respondent; nor why the camera work had been scheduled for the following Monday morning without an attempt to contact the Respondent.

RULINGS OF LAW

RSA 205-A:2 Prohibition. No person who owns or operates a manufactured housing park shall:

IX. Charge or attempt to charge a tenant for repair or maintenance to any underground system, such as oil tanks, or water, electrical or septic systems, for causes not due to the negligence of the tenant or transfer or attempt to transfer to a current tenant responsibility for such repair or maintenance to the tenant by gift or otherwise of all or part of any such underground system.

CONCLUSION AND DISCUSSION

The Board finds the following:

For the Majority:

After hearing all of the testimony submitted by the parties, the Board feels that the complaints against the Respondent are not sustained. Per Man 210.02, the burden of proof resides with the party asserting the proposition, by a preponderance of the evidence. In this matter, that assertion is that a violation of the statute's language: "No person who owns or

OTHER MATTERS

Man 211.01 Motions for rehearing, reconsideration or clarification or other such post-hearing motions shall be filed within 30 days of the date of the Board's order or decision. Filing a rehearing motion shall be a prerequisite to appealing to the Superior Court in accordance with RSA 204-A:28, II.

SO ORDERED

BOARD OF MANUFACTURED HOUSING

Dated: April 22, 2013

By: _____

Mark H. Tay, Esquire, Chairman

Members participating in this action:

Mark H. Tay, Esq., Chairman
Kenneth R. Nielsen, Esq., Vice - Chairman
Peter J. Graves
Juanita J. Martin
Lois Parris
Rep. Carol H. Friedrich
Rep. Rose M. Rogers
Judy Williams

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing Order has been mailed this date, postage prepaid, to Yvette Johnson, 6 Axle Avenue, Box 23, Danville, NH 03819 and Iron Wheel, Inc., Thomas Waters, 589 Main Street, Danville, NH 03819.

Dated: _____

Suzanne Beauchesne, Clerk
Board of Manufactured Housing